

REMARKS

In the final Office Action in this application no. 10/010,340 the examiner has issued a final rejection dated June 14, 2005. In the Office action he continued his rejection under 35 U.S.C. § 103 claiming obviousness in view of Cretzler (U.S. 5,644,724) in view of Hanna et al. (U.S. 6,230,928). In his specific response to the previous arguments the examiner indicated that applicants had not argued the combination of the references but only argued the references individually.

In this regard it is pointed out to the examiner that in the previous response it was the combination of references that was addressed. Specifically, on page 10, starting on the center paragraph is where the combination of references are discussed and continuing thereafter through page 12.

It further appears that the examiner was of the view that the claims did not adequately provide for the distinctions argued by the applicants. Accordingly, in the present preliminary amendment the claims have been further amended to again focus more specifically on the features that have been previously argued and are argued hereinafter. Those specific features will be subsequently pointed out after reviewing the examiner's argument and the content of the references.

The examiner argues that Cretzler provides all of the teachings of the present invention except for third-party escrow functionality. From this, the examiner cites Hanna et al. as providing the teaching of the third party escrow account as a modification to the method of Cretzler.

However, in reviewing the examiner's analysis of Cretzler, as provided on page 3 of the Final Office Action, the examiner indicates that Cretzler provides a teaching of the step

"crediting a tax account of the merchant with payment of the tax amount". Therefore the examiner concludes that it is "inherent" to the method of Cretzler "that the credit to the merchant (at the end of a taxing period) is a net credit representing a sum of the payments made during the taxing period".

It is believed that these steps are not present in Cretzler. Cretzler teaches a specific system whereby there is a device that the merchant accesses for transaction approval which also calculates the amount of the tax. After the merchant receives the authorization code he issues a receipt to the purchaser. The microprocessor then stores the transaction information including the amount of authorization allocated in taxes. (Column 4, lines 45-50).

At the end of the business day, the merchant enters a transmit code into the computer which causes the micro computer to send tax information to the bank of the merchant. Such includes:

1. the date and tax ID of the merchant;
2. the total sum of collected taxes;
3. the allocation of the total sum of collected taxes to the individual taxing authorities;
4. the date merchant expects to deposit the collected tax on the merchant bank; and
5. an authorization code to instruct the merchant bank to wire transfer the collected sums to the appropriate taxing authorities. (Column 4, lines 53-68).

Accordingly, the merchant must deposit the collected tax funds. The tax funds are not automatically removed before the merchant gets his money and automatically deposited

by the EFP without the merchant's intervention. A merchant must deposit the money and then he must authorize the payment.

Cretzler continues on column 5, in the first paragraph by again pointing out that after receiving the transaction data the corresponding merchant bank "waits a predetermined period of time to allow the merchant to deposit the collected funds into the account of the merchant bank before wire transferring the sums to the taxing authority banks".

It also points out that if the merchant has provided the bank with an authorization code "and funds are already on deposit" the merchant bank will wire transfer the funds indicated the next business day.

With respect to service banks, Cretzler points out in column 5, lines 19-35 that at the end of the day the merchant enters the transmit code. To cause "an authorization code to instruct the service bank to wire transfer the allocated sums to the appropriate taxing authorities."

When the service bank receives this authorization it "waits a predetermined period of time to allow the merchant to return the debits receipts to the service bank for processing." Alternately, "if the merchant has provided the bank with an authorization code and the sums are already on deposit, the merchant bank will wire transfer the sums allocated the next business day." (Column 5, lines 35-42).

Again in column 5, lines 55-60, Cretzler describes that for cash transactions "a merchant can enter the sum of collected taxes... and instruct the bank to wire transfer, from the account of the merchant the collected taxes...". Alternately, for credit and debit card transactions "the merchant can notify individual and selected ones of the credit card or debit

card service banks... and instruct the service bank to wire transfer from the account of the merchant those sums allocated to taxes."

It is therefore evident from Cretzler that it is the merchant who must instigate the payment. Without the merchant giving an authorization to pay, an authorization code, and instructions to wire transfer, an indication of where to take the sums from, etc., no taxes will be paid. Throughout Cretzler it is the merchant that instigates and causes the payment to be made.

Accordingly, if the merchant desires to sit and wait one day, one month, six months, one year, no payment will be made to the taxing authorities without his specific authorization to process with the actual payment. The tax funds are under his control and until he authorizes proceeding with the payment no such payment will be made for each and every transaction.

Furthermore, from Cretzler there is absolutely no indication of any association between the account holding the taxes and the account in which the sum for the transaction is deposited in the merchant account. By way of example, if the particular sales item is \$100, and it is calculated that there is \$10 due in taxes, the merchant is credited with the \$110 into his account. In connection with the merchant bank, it clearly indicates that the merchant has to indicate when he is going to deposit the money (column 4, line 63; column 5, lines 5-8). In the case of the service bank it must wait until the merchant returns the debit receipts or until it receives an authorization codes and the funds are already on deposit (column 5, lines 30-40 and lines 65-67). In no place does Cretzler in any way indicate that it is the BFP that sets aside the money in a separate account and it controls the deposit of the tax money in the escrow account so that the merchant never even gets the tax money into his

own accounts. In the present invention, the only monies that the merchant gets is the net amount after the taxes have been already subtracted. Thus, in the example given, only \$100 would be deposited by the EFP in the merchant account. The \$10 is never deposited in the merchant account. It is always deposited immediately by the EFP in the escrow account which is under control of the EFP.

Nothing in Cretzler teaches that the EFP subtracts the tax money before paying the merchant and sends the merchant only the transaction money and not the tax money. Nothing in Cretzler teaches that the EFP is the one that credits the tax (escrow) account by itself without any authorization code by the merchant for such deposit based upon each and every transaction. Nothing in Cretzler teaches an association between the merchant account and the tax account both of which are controlled by the EFP so that the EFP deposits only a portion of the total amount into the merchant account and applies another portion (the tax amount) to the escrow account.

Furthermore, the examiner relies upon the Hanna et al. reference for teaching "a third party escrow". However, Hanna does not provide for a "third party escrow". Hanna et al. is teaching a merchant ATM machine. It is an automated merchant banking apparatus. It is an apparatus that the merchant himself utilizes and controls. In every step of Hanna it is the merchant who makes use of the piece of equipment. It is the merchant who has control and provides instruction on every step of the way.

The examiner's reference to column 11, lines 45-59 of Hanna still relates to the merchant making use of the device. While he can establish a tax account and even a tax escrow account, it is the merchant that operates it to put in the money, to segregate receipts

on the basis of categories, etc. Furthermore, it is the merchant who instructs to transfer funds from an escrow account that he has deposited funds into.

There is absolutely no teachings about a third party depositing the money into the escrow account. It is the merchant who deposits the money into the escrow account and then instructs the third party to make payments from the escrow account. However, it is the merchant that deposits the money not a third party.

Therefore, combining Hanna into Cretzler still does not provide the teaching for having a third party separate monies and never even putting into the merchant's account but separating and putting it into a separate escrow account. Neither Cretzler nor Hanna provide that it is the third party that makes the deposit. Neither reference provides the teaching that it is the third party who has the funds available and the merchant never receives the funds in his account. The merchant receives only a portion of the transaction not including the escrow tax money which he never receives and it is never entered into his account.

The benefit of the claimed invention is that the tax monies are now under control not of the merchant, but of the bank. The merchant never has to deposit the money, never receives the money, never has control over the money, the money is extracted before the merchant receives it. Therefore, tax payments can be made without any involvement of the merchant to either deposit, authorize, instruct, or in any way indicate that the payment should be made. This lack of involvement of the merchant is totally absent from Cretzler and even when adding the combination of Hanna et al. still does not provide for any teaching of the merchants themselves being out of the picture and the EFP making the deposit directly into the escrow account.

Claim 9 is believed to already address the differences over the combination of references cited by the examiner. Specifically, the claim already indicated that the escrow (tax) account is already credited automatically by EFP into the escrow account not by the merchant. Furthermore, the claim already said that the merchant's account is credited with a net payment after reducing the amount by the escrow account.

Nevertheless, to further bring out the aforementioned features and distinguishing over the combination of the references, the claim has been amended to recite that the merchant account is credited with only the net payment of the portion of the authorized transaction reduced by the escrow amount. Thus, the claim now specifically recites that if the transaction and the tax are \$110, the merchant account only receives \$100. He never receives the \$10 in his account. The \$10 is automatically removed and put into his escrow account so that he only receives the \$100.

The claim has also been further amended to recite that the various steps of determining, forwarding and crediting are all executed by the EFP upon the receipt of the payment request "for the transaction". Thus the only request that the merchant is involved in is the request relating to the initial transaction. There is no further subsequent action by the merchant in connection with the merchant escrow account.

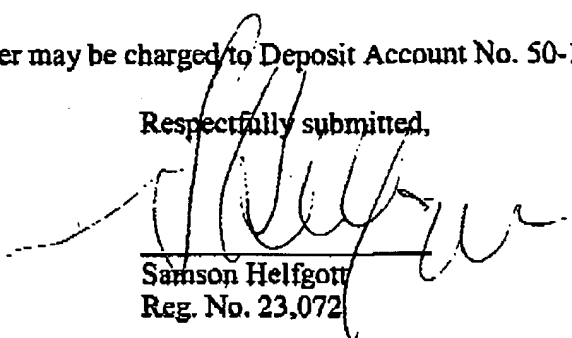
CONCLUSION

In view of the amendments as set forth above, it is believed this application is in condition for allowance which action is respectfully requested. If for any reason the Examiner feels further amendments are needed it is respectfully requested that the Examiner

telephone the undersigned attorney at the number listed below prior to issuing any further Office Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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Docket No.: 021180-00053 (BRWN 20.199)

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